

1 MARTÍN A. SABELLI (SBN 164772)
149 Natoma Street, Suite 300
2 San Francisco, CA 94105
(415) 284-9806
3 msabelli@comcast.net

4 JOSH A. COHEN (SBN 217853)
Clarence Dyer & Cohen LLP
5 899 Ellis Street
San Francisco, CA 94109
6 (415) 749-1800
7 jcohen@clarencedyer.com

8 Attorneys for Defendant
9 RESOURCE DEVELOPMENT SERVICES, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14
15 NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH,

16 Plaintiff,

17 v.

18 RESOURCE DEVELOPMENT SERVICES,
19 INC. et al.,

20 Defendants.

CASE NO. C 10-01324 JF

**DEFENDANT RESOURCE
DEVELOPMENT SERVICES, INC.'S
ANSWER TO PLAINTIFF'S SECOND
AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

21
22 Resource Development Services, Inc. ("RDS," or "Defendant"), by and through counsel,
23 answers the allegations in National Union Fire Insurance Company of Pittsburgh's Second
24 Amended Complaint as follows:

25 1. Answering paragraph 1 of the Second Amended Complaint, RDS lacks information
26 or knowledge sufficient to form a belief as to the truth of the averment regarding the plaintiff's
27 corporate structure and principal place of business, and on that basis denies the averment in its
28 entirety.

1 2. Answering paragraph 2 of the Second Amended Complaint, RDS lacks information
2 or knowledge sufficient to form a belief as to the truth of the averment regarding plaintiff's status
3 as subrogee, and on that basis denies the averment in its entirety.

4 3. Answering paragraph 3 of the Second Amended Complaint, RDS admits that RDS
5 is a corporation organized and existing under the laws of the state of California with its principal
6 place of business located in the County of Santa Clara. RDS lacks information or knowledge
7 sufficient to form a belief as to the truth of the averment that RDS was incorporated and existed
8 "at all times relevant hereto," and on that basis denies the averment. Except as specifically
9 admitted, RDS denies each and every averment of paragraph 3.

10 4. Answering paragraph 4 of the Second Amended Complaint, this paragraph is
11 directed to a party other than RDS, and no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averment, and on that basis denies the averment.

14 5. Answering paragraph 5 of the Second Amended Complaint, this paragraph is
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averment, and on that basis denies the averment.

18 6. Answering paragraph 6 of the Second Amended Complaint, this paragraph is
19 directed to parties other than RDS, and no response is required. To the extent that a response is
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
21 of the averment, and on that basis denies the averment.

22 7. Answering paragraph 7 of the Second Amended Complaint, this paragraph is
23 directed to parties other than RDS, and no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averment, and on that basis denies the averment.

26 8. Answering paragraph 8 of the Second Amended Complaint, this paragraph is
27 directed to parties other than RDS, and no response is required. To the extent that a response is
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2 9. Answering paragraph 9 of the Second Amended Complaint, this paragraph is
3 directed to parties other than RDS, and no response is required. To the extent that a response is
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
5 of the averment, and on that basis denies the averment.

6 10. Answering paragraph 10 of the Second Amended Complaint, this paragraph is
7 directed to parties other than RDS, and no response is required. To the extent that a response is
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
9 of the averment, and on that basis denies the averment.

10 11. Answering paragraph 11 of the Second Amended Complaint, this paragraph is
11 directed to parties other than RDS, and no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averment, and on that basis denies the averment.

14 12. Answering paragraph 12 of the Second Amended Complaint, this paragraph is
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averment, and on that basis denies the averment.

18 13. Answering paragraph 13 of the Second Amended Complaint, this paragraph is
19 directed to parties other than RDS, and no response is required. To the extent that a response is
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
21 of the averment, and on that basis denies the averment.

22 14. Answering paragraph 14 of the Second Amended Complaint, this paragraph is
23 directed to parties other than RDS, and no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averment, and on that basis denies the averment.

26 15. Answering paragraph 15 of the Second Amended Complaint, this paragraph is
27 directed to parties other than RDS, and no response is required. To the extent that a response is
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2 16. Answering paragraph 16 of the Second Amended Complaint, this paragraph is
3 directed to parties other than RDS, and no response is required. To the extent that a response is
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
5 of the averment, and on that basis denies the averment.

6 17. Answering paragraph 17 of the Second Amended Complaint, this paragraph is
7 directed to parties other than RDS, and no response is required. To the extent that a response is
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
9 of the averment, and on that basis denies the averment.

10 18. Answering paragraph 18 of the Second Amended Complaint, this paragraph is
11 directed to parties other than RDS, and no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averment, and on that basis denies the averment.

14 19. Answering paragraph 19 of the Second Amended Complaint, this paragraph is
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averment, and on that basis denies the averment.

18 20. Answering paragraph 20 of the Second Amended Complaint, this paragraph is
19 directed to parties other than RDS, and no response is required. To the extent that a response is
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
21 of the averment, and on that basis denies the averment.

22 21. Answering paragraph 21 of the Second Amended Complaint, this paragraph is
23 directed to parties other than RDS, and no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averment, and on that basis denies the averment.

26 22. Answering paragraph 22 of the Second Amended Complaint, this paragraph is
27 directed to parties other than RDS, and no response is required. To the extent that a response is
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2 23. Answering paragraph 23 of the Second Amended Complaint, this paragraph is
3 directed to parties other than RDS, and no response is required. To the extent that a response is
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
5 of the averment, and on that basis denies the averment.

6 24. Answering paragraph 24 of the Second Amended Complaint, this paragraph is
7 directed to parties other than RDS, and no response is required. To the extent that a response is
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
9 of the averment, and on that basis denies the averment.

10 25. Answering paragraph 25 of the Second Amended Complaint, this paragraph is
11 directed to parties other than RDS, and no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averment, and on that basis denies the averment.

14 26. Answering paragraph 26 of the Second Amended Complaint, this paragraph is
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averment, and on that basis denies the averment.

18 27. Answering paragraph 27 of the Second Amended Complaint, this paragraph is
19 directed to parties other than RDS, and no response is required. To the extent that a response is
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
21 of the averment, and on that basis denies the averment.

22 28. Answering paragraph 28 of the Second Amended Complaint, this paragraph is
23 directed to parties other than RDS, and no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averment, and on that basis denies the averment.

26 29. Answering paragraph 29 of the Second Amended Complaint, this paragraph is
27 directed to parties other than RDS, and no response is required. To the extent that a response is
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2 30. Answering paragraph 30 of the Second Amended Complaint, this paragraph is
3 directed to parties other than RDS, and no response is required. To the extent that a response is
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
5 of the averment, and on that basis denies the averment.

6 31. Answering paragraph 31 of the Second Amended Complaint, this paragraph is
7 directed to parties other than RDS, and no response is required. To the extent that a response is
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
9 of the averment, and on that basis denies the averment.

10 32. Answering paragraph 32 of the Second Amended Complaint, this paragraph is
11 directed to parties other than RDS, and no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averment, and on that basis denies the averment.

14 33. Answering paragraph 33 of the Second Amended Complaint, this paragraph is
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averment, and on that basis denies the averment.

18 34. Answering paragraph 34 of the Second Amended Complaint, this paragraph is
19 directed to parties other than RDS, and no response is required. To the extent that a response is
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
21 of the averment, and on that basis denies the averment.

22 35. Answering paragraph 35 of the Second Amended Complaint, this paragraph is
23 directed to parties other than RDS, and no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averment, and on that basis denies the averment.

26 36. Answering paragraph 36 of the Second Amended Complaint, this paragraph is
27 directed to parties other than RDS, and no response is required. To the extent that a response is
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averment, and on that basis denies the averment.

2 37. Answering paragraph 37 of the Second Amended Complaint, this paragraph is
3 directed to parties other than RDS, and no response is required. To the extent that a response is
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
5 of the averment, and on that basis denies the averment.

6 38. Answering paragraph 38 of the Second Amended Complaint, this paragraph is
7 directed to parties other than RDS, and no response is required. To the extent that a response is
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
9 of the averment, and on that basis denies the averment.

10 39. Answering paragraph 39 of the Second Amended Complaint, this paragraph is
11 directed to parties other than RDS, and no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averment, and on that basis denies the averment.

14 40. Answering paragraph 40 of the Second Amended Complaint, this paragraph is
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averment, and on that basis denies the averment.

18 41. Answering paragraph 41 of the Second Amended Complaint, this paragraph is
19 directed to parties other than RDS, and no response is required. To the extent that a response is
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
21 of the averment, and on that basis denies the averment.

22 42. Answering paragraph 42 of the Second Amended Complaint, this paragraph is
23 directed to parties other than RDS, and no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averment, and on that basis denies the averment.

26 43. Answering paragraph 43 of the Second Amended Complaint, RDS admits that
27 plaintiff alleges that the Court has subject-matter jurisdiction pursuant to 28 U.S.C. §1332 but
28 denies the merits of each and every claim alleged against them in the Complaint. Except as

1 specifically admitted, RDS denies each and every averment of paragraph 43.

2 44. Answering paragraph 44 of the Second Amended Complaint, RDS admits that
3 plaintiff alleges that venue is proper in this judicial district, but denies having engaged in any
4 transactions, acts, practices, or courses of conduct constituting a violation of the laws upon which
5 venue is allegedly based. Except as specifically admitted, RDS denies each and every averment of
6 paragraph 44.

7 45. Answering paragraph 45 of the Second Amended Complaint, RDS admits that RDS
8 operated as a broker between waste-hauling companies and landfills, and negotiated disposal rates
9 with landfills, including the Kirby Canyon Landfill. Except as specifically admitted, RDS denies
10 each and every averment of paragraph 45.

11 46. Answering paragraph 46 of the Second Amended Complaint, RDS admits that Mr.
12 Lucero was a principal of RDS. Except as specifically admitted, RDS denies each and every
13 averment of paragraph 46.

14 47. Answering paragraph 47 of the Second Amended Complaint, RDS admits that
15 Aracelli Franco was employed by RDS as a billing clerk. As to the averments regarding Franco's
16 conduct, these averments are directed to a party other than RDS, and no response is required. To
17 the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient to
18 form a belief as to the truth of the averment, and on that basis denies the averment. Except as
19 specifically admitted, RDS denies each and every averment of paragraph 47.

20 48. Answering paragraph 48 of the Second Amended Complaint, RDS admits that
21 Elvia Nenque was employed by RDS as a billing clerk. As to the averments regarding Nenque's
22 conduct, these averments are directed to a party other than RDS, and no response is required. To
23 the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient to
24 form a belief as to the truth of the averment, and on that basis denies the averment. Except as
25 specifically admitted, RDS denies each and every averment of paragraph 48.

26 49. Answering paragraph 49 of the Second Amended Complaint, RDS admits that
27 Martha Renteria was employed by RDS as an accountant and bookkeeper, and that she worked in
28 a business suite in Salinas, California. As to the averments regarding Renteria's conduct, these

1 averments are directed to a party other than RDS, and no response is required. To the extent that a
2 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as
3 to the truth of the averments, and on that basis denies the averments. Except as specifically
4 admitted, RDS denies each and every averment of paragraph 49.

5 50. Answering paragraph 50 of the Second Amended Complaint, the averments are
6 directed to parties other than RDS, and no response is required. To the extent that a response is
7 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
8 of the averments, and on that basis denies the averments.

9 51. Answering paragraph 51 of the Second Amended Complaint, the averments are
10 directed to parties other than RDS, and no response is required. To the extent that a response is
11 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
12 of the averments, and on that basis denies the averments.

13 52. Answering paragraph 52 of the Second Amended Complaint, the averments are
14 directed to parties other than RDS, and no response is required. To the extent that a response is
15 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
16 of the averments, and on that basis denies the averments.

17 53. Answering paragraph 53 of the Second Amended Complaint, the averments are
18 directed to parties other than RDS, and no response is required. To the extent that a response is
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
20 of the averments, and on that basis denies the averments.

21 54. Answering paragraph 54 of the Second Amended Complaint, the averments are
22 directed to parties other than RDS, and no response is required. To the extent that a response is
23 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
24 of the averments, and on that basis denies the averments.

25 55. Answering paragraph 55 of the Second Amended Complaint, the averments are
26 directed to parties other than RDS, and no response is required. To the extent that a response is
27 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
28 of the averments, and on that basis denies the averments.

1 56. Answering paragraph 56 of the Second Amended Complaint, the averments are
2 directed to parties other than RDS, and no response is required. To the extent that a response is
3 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
4 of the averments, and on that basis denies the averments.

5 57. Answering paragraph 57 of the Second Amended Complaint, the averments are
6 directed to parties other than RDS, and no response is required. To the extent that a response is
7 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
8 of the averments, and on that basis denies the averments.

9 58. Answering paragraph 58 of the Second Amended Complaint, RDS admits that
10 Valley Recycling, Randazzo Enterprises, Dominguez & Sons, Premier Recycling, Pacific Coast
11 Recycling, Gibson's Resource Group, Cal Waste, Accurate Cleaning Systems, Alviso, A&S
12 Metals, D&C Construction, JLV Equipment, DVBE Trucking, Nogalera Trucking, A&A
13 Recycling, Bay Area Hauling Maintenance, Dependable Waste Solutions, Paramount Drywall,
14 RAD Roll-Off, All Trash, Bay Cal Recycling, JM Hauling, Almaden Construction, Del Toro,
15 Espinoza & Daughter Hauling, and Affordable Roofing were RDS trucking customers. As to the
16 averments regarding actions of those defendants, those averments are directed to parties other than
17 RDS, and no response is required. To the extent that a response is deemed necessary, RDS lacks
18 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
19 basis denies the averments. As to the averments regarding whether the trucking company
20 defendants were RDS customers "at all relevant times," RDS lacks information or knowledge
21 sufficient to form a belief as to the truth of the averment, and on that basis denies the averment.
22 Except as specifically admitted, RDS denies each and every averment of paragraph 58.

23 59. Answering paragraph 59 of the Second Amended Complaint, RDS denies the
24 averments.

25 60. Answering paragraph 60 of the Second Amended Complaint, RDS lacks
26 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
27 basis denies the averments.

28 61. Answering paragraph 61 of the Second Amended Complaint, RDS lacks

1 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
2 basis denies the averments.

3 62. Answering paragraph 62 of the Second Amended Complaint, RDS lacks
4 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
5 basis denies the averments.

6 63. Answering paragraph 63 of the Second Amended Complaint, the averments are
7 directed to parties other than RDS, and no response is required. To the extent that a response is
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
9 of the averments, and on that basis denies the averments.

10 64. Answering paragraph 64 of the Second Amended Complaint, RDS denies each and
11 every averment in this paragraph.

12 65. Answering paragraph 65 of the Second Amended Complaint, as to the averments
13 directed to parties other than RDS, no response is required. To the extent that a response is
14 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
15 of the averments, and on that basis denies the averments. RDS denies each and every remaining
16 averment in paragraph 65.

17 66. Answering paragraph 66 of the Second Amended Complaint, as to the averments
18 directed to parties other than RDS, no response is required. To the extent that a response is
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
20 of the averments, and on that basis denies the averments. RDS denies each and every remaining
21 averment in paragraph 66.

22 67. Answering paragraph 67 of the Second Amended Complaint, as to the averments
23 directed to parties other than RDS, no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averments, and on that basis denies the averments. RDS denies each and every remaining
26 averment in paragraph 67.

27 68. Answering paragraph 68 of the Second Amended Complaint, as to the averments
28 directed to parties other than RDS, no response is required. To the extent that a response is

1 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
2 of the averments, and on that basis denies the averments. RDS denies each and every remaining
3 averment in paragraph 68.

4 69. Answering paragraph 69 of the Second Amended Complaint, the averment
5 regarding what the trucking company defendants “knew” is directed to parties other than RDS,
6 and no response is required. The averments in the second sentence are directed to parties other
7 than RDS, and no response is required. To the extent that a response is deemed necessary, RDS
8 lacks information or knowledge sufficient to form a belief as to the truth of the averments, and on
9 that basis denies the averments. RDS denies each and every remaining averment of paragraph 69.

10 70. Answering paragraph 70 of the Second Amended Complaint, the averment
11 regarding what each and every one of the trucking company defendants “knew” or “understood” is
12 directed to parties other than RDS, and no response is required. To the extent that a response is
13 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
14 of the averment, and on that basis denies the averment. RDS denies each and every remaining
15 averment of paragraph 70.

16 71. Answering paragraph 71 of the Second Amended Complaint, the averment
17 regarding what each and every one of the trucking company defendants “knew” or “understood” is
18 directed to parties other than RDS, and no response is required. To the extent that a response is
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
20 of the averment, and on that basis denies the averment. RDS denies each and every remaining
21 averment of paragraph 71.

22 72. Answering paragraph 72 of the Second Amended Complaint, as to the averments
23 directed to parties other than RDS, no response is required. To the extent that a response is
24 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
25 of the averments, and on that basis denies the averments. RDS denies each and every remaining
26 averment of paragraph 72.

27 73. Answering paragraph 73 of the Second Amended Complaint, the averments in the
28 first sentence regarding what each of the trucking company defendants “knew” are directed to

1 parties other than RDS, and no response is required. To the extent that a response is deemed
2 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
3 averments, and on that basis denies the averments. RDS denies each and every remaining
4 averment of paragraph 73.

5 74. Answering paragraph 74 of the Second Amended Complaint, the averments in this
6 paragraph regarding the actions of any other defendant are directed to parties other than RDS, and
7 no response is required. To the extent that a response is deemed necessary, RDS lacks
8 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
9 basis denies the averments. RDS denies each and every remaining averment of paragraph 74.

10 75. Answering paragraph 75 of the Second Amended Complaint, this paragraph
11 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 74, to
12 which no additional response is required.

13 76. Answering paragraph 76 of the Second Amended Complaint, the averments in this
14 paragraph regarding the actions of any other defendant are directed to parties other than RDS, and
15 no response is required. To the extent that a response is deemed necessary, RDS lacks
16 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
17 basis denies the averments. RDS denies each and every remaining averment of paragraph 76.

18 a. Answering subparagraph (a) of paragraph 76 of the Second Amended
19 Complaint, the averments in this subparagraph are directed to parties other than RDS, and no
20 response is required. To the extent that a response is deemed necessary, RDS lacks information or
21 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the
22 averments.

23 b. Answering subparagraph (b) of paragraph 76 of the Second Amended
24 Complaint, RDS denies the averment.

25 c. Answering subparagraph (c) of paragraph 76 of the Second Amended
26 Complaint, RDS denies the averment. To the extent the averment in this subparagraph refers to
27 actions taken by "Lucero and/or Franco," the averment is directed to parties other than RDS, and
28 no response is required. To the extent that a response is deemed necessary, RDS lacks

1 information or knowledge sufficient to form a belief as to the truth of the averment, and on that
2 basis denies the averment.

3 77. Answering paragraph 77 of the Second Amended Complaint, the averment
4 regarding the awareness of any other defendant is directed to parties other than RDS, and no
5 response is required. To the extent that a response is deemed necessary, RDS lacks information or
6 knowledge sufficient to form a belief as to the truth of the averment, and on that basis denies the
7 averment. RDS denies each and every remaining averment of paragraph 77.

8 a. Answering subparagraph (a) of paragraph 77, the averments are directed to
9 parties other than RDS, and no response is required. To the extent that a response is deemed
10 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
11 averments, and on that basis denies the averments.

12 b. Answering subparagraph (b) of paragraph 77, the averment is directed to
13 parties other than RDS, and no response is required. To the extent that a response is deemed
14 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
15 averment, and on that basis denies the averment.

16 c. Answering subparagraph (c) of paragraph 77, RDS denies each and every
17 averment.

18 d. Answering subparagraph (d) of paragraph 77, the averment is directed to
19 parties other than RDS, and no response is required. To the extent that a response is deemed
20 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
21 averment, and on that basis denies the averment.

22 e. Answering subparagraph (e) of paragraph 77, the averment is directed to
23 parties other than RDS, and no response is required. To the extent that a response is deemed
24 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
25 averment, and on that basis denies the averment.

26 f. Answering subparagraph (f) of paragraph 77, the averment is directed to
27 parties other than RDS, and no response is required. To the extent that a response is deemed
28 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the

1 averment, and on that basis denies the averment.

2 g. Answering subparagraph (g) of paragraph 77, the averment is directed to
3 parties other than RDS, and no response is required. To the extent that a response is deemed
4 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
5 averment, and on that basis denies the averment.

6 h. Answering subparagraph (h) of paragraph 77, the averment is directed to
7 parties other than RDS, and no response is required. To the extent that a response is deemed
8 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
9 averment, and on that basis denies the averment..

10 78. Answering paragraph 78 of the Second Amended Complaint, the averment
11 concerning Franco's awareness is directed to parties other than RDS, and no response is required.
12 To the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient
13 to form a belief as to the truth of the averment, and on that basis denies the averment.

14 a. Answering subparagraph (a) of paragraph 78, the averment is directed to
15 parties other than RDS, and no response is required. To the extent that a response is deemed
16 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
17 averment, and on that basis denies the averment.

18 b. Answering subparagraph (b) of paragraph 78, the averment is directed to
19 parties other than RDS, and no response is required. To the extent that a response is deemed
20 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
21 averment, and on that basis denies the averment.

22 c. Answering subparagraph (c) of paragraph 78, the averments in this
23 subparagraph regarding the actions of other defendants are directed to parties other than RDS, and
24 no response is required. To the extent that a response is deemed necessary, RDS lacks
25 information or knowledge sufficient to form a belief as to the truth of the averment, and on that
26 basis denies the averment. RDS denies each and every remaining averment of subparagraph (c).

27 d. Answering subparagraph (d) of paragraph 78, RDS admits that Franco was
28 at one time responsible for RDS's accounts receivables and billing and that she prepared some

1 invoices for some of the trucking company defendants. As to the averments regarding the
2 “understanding” of Franco, the averments are directed to parties other than RDS, and no response
3 is required. To the extent that a response is deemed necessary, RDS lacks information or
4 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the
5 averments. Except as specifically admitted, RDS denies each and every averment of subparagraph
6 (d).

7 e. Answering subparagraph (e) of paragraph 78, as to the averment directed to
8 parties other than RDS, no response is required. To the extent that a response is deemed
9 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
10 averment regarding Franco’s awareness of any facts, and on that basis denies the averment. RDS
11 denies each and every remaining averment of subparagraph (e).

12 79. Answering paragraph 79 of the Second Amended Complaint, the averment
13 regarding Nenque’s awareness is directed to parties other than RDS, and no response is required.
14 To the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient
15 to form a belief as to the truth of the averment, and on that basis denies the averment. RDS denies
16 each and every remaining averment of paragraph 79.

17 a. Answering subparagraph (a) of paragraph 79, the averment is directed to
18 parties other than RDS, and no response is required. To the extent that a response is deemed
19 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
20 averment, and on that basis denies the averment.

21 b. Answering subparagraph (b) of paragraph 79, the averment is directed to
22 parties other than RDS, and no response is required. To the extent that a response is deemed
23 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
24 averment, and on that basis denies the averment.

25 80. Answering paragraph 80 of the Second Amended Complaint, RDS admits that
26 Renteria was tasked with handling some of RDS’s accounts payable and disbursements. As to the
27 averment regarding Renteria’s awareness, or the awareness or actions of other defendants, the
28 averment is directed to parties other than RDS, and no response is required. To the extent that a

1 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as
2 to the truth of the averment, and on that basis denies the averment. Except as specifically
3 admitted, RDS denies each and every averment of paragraph 80.

4 81. Answering paragraph 81 of the Second Amended Complaint, the averments
5 regarding the knowledge or actions of any other defendants or Waste Management are directed to
6 parties other than RDS, and no response is required. To the extent that a response is deemed
7 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
8 averments, and on that basis denies the averments. As to the averment regarding materiality, this
9 averment calls for a legal conclusion to which no response is required. To the extent that a
10 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as
11 to the truth of the averment, and on that basis denies the averment. RDS denies each and every
12 remaining averment of paragraph 81.

13 82. Answering paragraph 82 of the Second Amended Complaint, the averments
14 regarding the actions of any other defendants are directed to parties other than RDS, and no
15 response is required. To the extent that a response is deemed necessary, RDS lacks information or
16 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the
17 averments. RDS denies each and every remaining averment of paragraph 82.

18 83. Answering paragraph 83 of the Second Amended Complaint, the averments
19 regarding the actions of any other defendants are directed to parties other than RDS, and no
20 response is required. To the extent that a response is deemed necessary, RDS lacks information or
21 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the
22 averments. RDS denies each and every remaining averment of paragraph 83.

23 84. Answering paragraph 84 of the Second Amended Complaint, as to the averments
24 directed to parties other than RDS, no response is required. To the extent that a response is
25 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
26 of the averments, and on that basis denies the averments. RDS denies each and every remaining
27 averment of paragraph 84.

28 85. Answering paragraph 85 of the Second Amended Complaint, the averments

1 regarding the actions of any other defendants are directed to parties other than RDS, and no
2 response is required. To the extent that a response is deemed necessary, RDS lacks information or
3 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the
4 averments. RDS denies each and every remaining averment of paragraph 85.

5 86. Answering paragraph 86 of the Second Amended Complaint, the averments
6 regarding the actions and duties of any other defendants are directed to parties other than RDS,
7 and no response is required. To the extent that a response is deemed necessary, RDS lacks
8 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
9 basis denies the averments. As to the averments regarding legal duties, these averments call for a
10 legal conclusion to which no response is required. To the extent that a response is deemed
11 necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth of the
12 averments, and on that basis denies the averments. RDS denies each and every remaining
13 averment of paragraph 86.

14 87. Answering paragraph 87 of the Second Amended Complaint, the averments are
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averments, and on that basis denies the averments.

18 88. Answering paragraph 88 of the Second Amended Complaint, RDS denies each and
19 every averment.

20 89. Answering paragraph 89 of the Second Amended Complaint, plaintiff's claim for
21 punitive damages was previously stricken by order of this Court, so no response from RDS is
22 required. Moreover, the averments in this paragraph state a legal conclusion that requires no
23 response. To the extent that a response is deemed necessary, RDS denies the averments in their
24 entirety.

25 90. Answering paragraph 90 of the Second Amended Complaint, this paragraph
26 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 89, to
27 which no additional response is required.

28 91. Answering paragraph 91 of the Second Amended Complaint, as to the averments

1 directed to parties other than RDS, no response is required. To the extent that a response is
2 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
3 of the averments, and on that basis denies the averments. RDS denies each and every remaining
4 averment of paragraph 91.

5 92. Answering paragraph 92 of the Second Amended Complaint, as to the averments
6 directed to parties other than RDS, no response is required. To the extent that a response is
7 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
8 of the averments, and on that basis denies the averments. RDS denies each and every remaining
9 averment of paragraph 92.

10 93. Answering paragraph 93 of the Second Amended Complaint, as to the averments
11 directed to parties other than RDS, no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averments, and on that basis denies the averments. RDS denies each and every remaining
14 averment of paragraph 93.

15 94. Answering paragraph 94 of the Second Amended Complaint, as to the averments
16 directed to parties other than RDS, no response is required. To the extent that a response is
17 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
18 of the averments, and on that basis denies the averments. RDS denies each and every remaining
19 averment of paragraph 94.

20 95. Answering paragraph 95 of the Second Amended Complaint, RDS denies having
21 acted in concert or otherwise conspired with any other defendant. As to any averments regarding
22 the knowledge or acts of other defendants, the averments are directed to parties other than RDS,
23 and no response is required. To the extent that a response is deemed necessary, RDS lacks
24 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
25 basis denies the averments. RDS denies each and every remaining averment of paragraph 95.

26 96. Answering paragraph 96 of the Second Amended Complaint, as to the averments
27 directed to parties other than RDS, no response is required. To the extent that a response is
28 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth

1 of the averments, and on that basis denies the averments. RDS denies each and every remaining
2 averment of paragraph 96.

3 97. Answering paragraph 97 of the Second Amended Complaint, RDS denies that it
4 conspired or agreed with any other defendant to conceal any facts. As to the averments regarding
5 the knowledge or acts of other defendants, the averments are directed to parties other than RDS,
6 and no response is required. To the extent that a response is deemed necessary, RDS lacks
7 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
8 basis denies the averments. RDS denies each and every remaining averment of paragraph 97.

9 98. Answering paragraph 98 of the Second Amended Complaint, the averments are
10 directed to parties other than RDS, and no response is required. To the extent that a response is
11 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
12 of the averments, and on that basis denies the averments.

13 99. Answering paragraph 99 of the Second Amended Complaint, as to the averments
14 regarding the actions of other defendants, the averments are directed to parties other than RDS,
15 and no response is required. To the extent that a response is deemed necessary, RDS lacks
16 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
17 basis denies the averments. RDS denies each and every remaining averment of paragraph 99.

18 100. Answering paragraph 100 of the Second Amended Complaint, as to any averments
19 regarding the actions of other defendants, the averments are directed to parties other than RDS,
20 and no response is required. To the extent that a response is deemed necessary, RDS lacks
21 information or knowledge sufficient to form a belief as to the truth of the averments, and on that
22 basis denies the averments. RDS denies each and every remaining averment of paragraph 100.

23 101. Answering paragraph 101 of the Second Amended Complaint, RDS denies each
24 and every averment.

25 102. Answering paragraph 102 of the Second Amended Complaint, as to any averments
26 regarding the actions of other parties, the averments are directed to parties other than RDS, and no
27 response is required. To the extent that a response is deemed necessary, RDS lacks information or
28 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the

1 averments. RDS denies each and every remaining averment of paragraph 102.

2 103. Answering paragraph 103 of the Second Amended Complaint, plaintiff's claim for
3 punitive damages was previously stricken by order of this Court, so no response from RDS is
4 required. Moreover, the averments in this paragraph state a legal conclusion that requires no
5 response. To the extent that a response is deemed necessary, RDS denies the averments in their
6 entirety.

7 104. Answering paragraph 104 of the Second Amended Complaint, this paragraph
8 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 103,
9 to which no additional response is required.

10 105. Answering paragraph 105 of the Second Amended Complaint, the averments are
11 directed to parties other than RDS, and no response is required. To the extent that a response is
12 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
13 of the averments, and on that basis denies the averments.

14 106. Answering paragraph 106 of the Second Amended Complaint, the averments are
15 directed to parties other than RDS, and no response is required. To the extent that a response is
16 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
17 of the averments, and on that basis denies the averments.

18 107. Answering paragraph 107 of the Second Amended Complaint, the averment is
19 directed to parties other than RDS, and no response is required. To the extent that a response is
20 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
21 of the averment, and on that basis denies the averment.

22 108. Answering paragraph 108 of the Second Amended Complaint, as to the averments
23 regarding the actions and knowledge of other defendants, the averments are directed to parties
24 other than RDS, and no response is required. To the extent that a response is deemed necessary,
25 RDS lacks information or knowledge sufficient to form a belief as to the truth of the averments,
26 and on that basis denies the averments. RDS denies each and every remaining averment of
27 paragraph 108.

28 109. Answering paragraph 109 of the Second Amended Complaint, as to any averments

1 regarding the actions of other parties, the averments are directed to parties other than RDS, and no
2 response is required. To the extent that a response is deemed necessary, RDS lacks information or
3 knowledge sufficient to form a belief as to the truth of the averments, and on that basis denies the
4 averments. RDS denies each and every remaining averment of paragraph 109.

5 110. Answering paragraph 110 of the Second Amended Complaint, the averments call
6 for a legal conclusion and are directed to parties other than RDS, and no response is required. To
7 the extent that a response is deemed necessary, RDS lacks information or knowledge sufficient to
8 form a belief as to the truth of the averments, and on that basis denies the averments.

9 111. Answering paragraph 111 of the Second Amended Complaint, this paragraph
10 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 89, to
11 which no additional response is required.

12 112. Answering paragraph 112 of the Second Amended Complaint, the averment is
13 directed to parties other than RDS, and no response is required. To the extent that a response is
14 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
15 of the averment, and on that basis denies the averment.

16 113. Answering paragraph 113 of the Second Amended Complaint, the averments are
17 directed to parties other than RDS, and no response is required. To the extent that a response is
18 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
19 of the averments, and on that basis denies the averments.

20 114. Answering paragraph 114 of the Second Amended Complaint, the averment is
21 directed to parties other than RDS, and no response is required. To the extent that a response is
22 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
23 of the averment, and on that basis denies the averment.

24 115. Answering paragraph 115 of the Second Amended Complaint, as to the averments
25 regarding the knowledge or actions of other defendants, the averments are directed to parties other
26 than RDS, and no response is required. To the extent that a response is deemed necessary, RDS
27 lacks information or knowledge sufficient to form a belief as to the truth of the averments, and on
28 that basis denies the averments. RDS denies each and every remaining averment of paragraph

1 115.

2 116. Answering paragraph 116 of the Second Amended Complaint, the averment is
3 directed to parties other than RDS, and no response is required. To the extent that a response is
4 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
5 of the averment, and on that basis denies the averment.

6 117. Answering paragraph 117 of the Second Amended Complaint, the averment is
7 directed to parties other than RDS, and no response is required. To the extent that a response is
8 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
9 of the averment, and on that basis denies the averment.

10 118. Answering paragraph 118 of the Second Amended Complaint, this paragraph
11 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 89
12 and 111 through 117, to which no additional response is required.

13 119. Answering paragraph 119 of the Second Amended Complaint, the averment is
14 directed to parties other than RDS, and no response is required. To the extent that a response is
15 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
16 of the averment, and on that basis denies the averment.

17 120. Answering paragraph 120 of the Second Amended Complaint, the averment is
18 directed to parties other than RDS, and no response is required. To the extent that a response is
19 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
20 of the averment, and on that basis denies the averment.

21 121. Answering paragraph 121 of the Second Amended Complaint, the averment is
22 directed to parties other than RDS, and no response is required. To the extent that a response is
23 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
24 of the averment, and on that basis denies the averment.

25 122. Answering paragraph 122 of the Second Amended Complaint, the averment is
26 directed to parties other than RDS, and no response is required. To the extent that a response is
27 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
28 of the averment, and on that basis denies the averment.

1 123. Answering paragraph 123 of the Second Amended Complaint, this paragraph
2 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 74, to
3 which no additional response is required.

4 124. Answering paragraph 124 of the Second Amended Complaint, the averment is
5 directed to parties other than RDS, and no response is required. To the extent that a response is
6 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
7 of the averment, and on that basis denies the averment.

8 125. Answering paragraph 125 of the Second Amended Complaint, the averment is
9 directed to parties other than RDS, and no response is required. To the extent that a response is
10 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
11 of the averment, and on that basis denies the averment.

12 126. Answering paragraph 126 of the Second Amended Complaint, the averment is
13 directed to parties other than RDS, and no response is required. To the extent that a response is
14 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
15 of the averment, and on that basis denies the averment.

16 127. Answering paragraph 127 of the Second Amended Complaint, the averment is
17 directed to parties other than RDS, and no response is required. To the extent that a response is
18 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
19 of the averment, and on that basis denies the averment.

20 128. Answering paragraph 128 of the Second Amended Complaint, the averment is
21 directed to parties other than RDS, and no response is required. To the extent that a response is
22 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
23 of the averment, and on that basis denies the averment.

24 129. Answering paragraph 129 of the Second Amended Complaint, the averment is
25 directed to parties other than RDS, and no response is required. To the extent that a response is
26 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
27 of the averment, and on that basis denies the averment.

28 130. Answering paragraph 130 of the Second Amended Complaint, this paragraph

1 purports to reaffirm and reallege each and every allegation set forth in paragraphs 1 through 103,
2 to which no additional response is required.

3 131. Answering paragraph 131 of the Second Amended Complaint, the averment is
4 directed to parties other than RDS, and no response is required. To the extent that a response is
5 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
6 of the averment, and on that basis denies the averment.

7 132. Answering paragraph 132 of the Second Amended Complaint, the averment that
8 RDS were engaged in a fraudulent concealment calls for a legal conclusion to which no response
9 is required. To the extent that a response is deemed necessary, RDS denies the averment in its
10 entirety. As to the averments regarding the actions or knowledge of other defendants, the
11 averments are directed to parties other than RDS, and no response is required. To the extent that a
12 response is deemed necessary, RDS lacks information or knowledge sufficient to form a belief as
13 to the truth of the averments, and on that basis denies the averments. RDS denies each and every
14 remaining averment of paragraph 132.

15 133. Answering paragraph 133 of the Second Amended Complaint, the averment is
16 directed to parties other than RDS, and no response is required. To the extent that a response is
17 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
18 of the averment, and on that basis denies the averment.

19 134. Answering paragraph 134 of the Second Amended Complaint, the averment is
20 directed to parties other than RDS, and no response is required. To the extent that a response is
21 deemed necessary, RDS lacks information or knowledge sufficient to form a belief as to the truth
22 of the averment, and on that basis denies the averment.

23 **DENIAL UNLESS EXPRESSLY ADMITTED**

24 RDS denies each and every allegation contained in the Second Amended Complaint that is
25 not expressly admitted herein.

26 **PRAYER FOR RELIEF**

27 Answering the plaintiff's prayer for relief, RDS denies that plaintiff is entitled to any relief
28 for which it prays, or any relief in any amount or of any kind whatsoever.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses to plaintiff's Second Amended Complaint, Defendants state as follows:

FIRST AFFIRMATIVE DEFENSE

The Second Amended Complaint, and each and every claim for relief set forth therein, fails to state facts a claim against defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Second Amended Complaint, and each and every claim for relief set forth therein, is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

The Second Amended Complaint, and each and every claim for relief set forth therein, is barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

The Second Amended Complaint, and each and every claim for relief set forth therein, is barred and the plaintiff is estopped from obtaining any recovery.

FIFTH AFFIRMATIVE DEFENSE

The Second Amended Complaint, and each cause of action therein, is barred by virtue of the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff and its insured failed and neglected to use reasonable care to minimize and mitigate the losses, injuries and damages complained of, if any there are.

SEVENTH AFFIRMATIVE DEFENSE

Should the plaintiff recover damages from RDS, RDS is entitled to indemnification, either in whole or in part, from all persons or entities whose negligence and/or fault proximately contributed to the damages alleged in the Second Amended Complaint, if any there are.

EIGHTH AFFIRMATIVE DEFENSE

RDS did not owe a duty to the plaintiff or its insured with regard to the allegations in the

1 Second Amended Complaint, and that the plaintiff, therefore, is barred from recovering from
2 RDS.

3 **NINTH AFFIRMATIVE DEFENSE**

4 The Second Amended Complaint, and each cause of action therein is barred and fails to
5 state a cause of action against RDS in that the plaintiff and its insured failed to give timely and
6 proper notice.

7 **TENTH AFFIRMATIVE DEFENSE**

8 The plaintiff or its insured are at fault in and about the matters referred to in the Second
9 Amended Complaint, and such fault on its part proximately caused and contributed to the damages
10 complained of, if any. RDS further alleges that any fault not attributable to the plaintiff or its
11 insured is the result of fault on the part of persons and entities other than RDS. This fault bars and
12 proportionately reduces any recovery by the plaintiff against RDS.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 The injuries/damages sustained by the plaintiff, if any, were either wholly or in part
15 negligently caused by persons, firms, corporations or entities other than RDS, and said negligence
16 is either imputed to plaintiff or its insured by reason of the relationship of said parties to the
17 plaintiff or its insured and/or said negligence comparatively reduces the percentage of negligence,
18 if any, by RDS.

19 **TWELTH AFFIRMATIVE DEFENSE**

20 The Second Amended Complaint, and each cause of action therein was not filed with
21 reasonable cause, and in the good faith belief that there was a justifiable controversy under the
22 facts and laws, which warranted the filing of the Second Amended Complaint.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 Co-defendants, and each of them, named and unnamed in the Second Amended Complaint,
25 were guilty of negligence or other acts or omissions in the matters set forth in the Second
26 Amended Complaint, which proximately caused or contributed to the damages or loss complained
27 of, if any, and that the Court is requested to determine and allocate the percentage of fault
28 attributable to each of the co-defendants.

1 **RESERVATION OF RIGHTS**

2 RDS asserts that the Second Amended Complaint, and each cause of action therein, is
3 stated in conclusory terms, and therefore RDS cannot fully anticipate all defenses that may be
4 applicable to this action. Accordingly, RDS hereby reserves their right to add additional defenses,
5 if any, to the extent such defenses are applicable to this action.

6 **PRAYER**

7 WHEREFORE, RDS requests judgment as follows:

- 8 1. That the plaintiff take nothing by reason of its Second Amended Complaint;
9 2. That the Second Amended Complaint be dismissed with prejudice;
10 3. For costs of suit incurred herein; and
11 4. For such other and further relief as the Court may deem just and proper.

12 **DEMAND FOR JURY TRIAL**

13 RDS requests a trial by jury on all aspects of this case so triable.
14
15

16 DATED: February 10, 2011

/s/ Josh A. Cohen

MARTIN A. SABELLI

JOSH A. COHEN

Attorneys for Defendant Resource Development
Services, Inc.